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May 6, 1939

Honorable S. B. Buchanan, Jr.  
County Attorney  
Val Verde County  
Del Rio, Texas

Dear Sir:

Opinion No. 0-844

Re: Is Council No. 18 of the League of United Latin American Citizens, or a traveling show employed by them liable for the occupation tax levied by Section 22a, Article 7047 as amended Vernon's Annotated Civil Statutes, or Section 19, Article 7047a, Vernon's Annotated Civil Statutes under the facts and circumstances outlined?

Under date of April 13, 1939, you submit for the opinion of this Department the following inquiry and supporting fact situation, which we quote from your letter:

"A question has arisen as to whether Council No. 18 of the League of United Latin American Citizens or a traveling show they employed are subject to the occupation tax under the following facts.

"The League of United Latin American Citizens is a Civic, Patriotic and Educational Organization with subordinate councils in Texas, New Mexico, Colorado, California and other states. Council No. 18 in an attempt to and being desirous of creating a Student Loan Fund for students desiring to go to universities or colleges employed a traveling roadshow. The show was being sponsored by Council No. 18 and the performances given in Lulae Hall which is owned by Council No. 18. The hall was not rented to the traveling show.

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Honorable S. B. Buchanan, Jr., May 6, 1939, Page 2

The traveling show uses no tent or other structure which they carry with them but in traveling from place to place show in regularly licensed theaters. The show is not a concert nor do they have musical entertainment. They are engaged in the presentation of drama and other amusements. The League is not engaged in business for private profit nor is Council No. 18. The receipts of the show, with the exception of the paying of the expenses of the people performing amounting to about 70% of the total proceeds, were for the benefit of the Student Loan Fund."

Article 7047, Section 22a, Vernon's Annotated Civil Statutes, and Article 7047a, Section 19 are the only sections of our occupation tax laws which could have any possible application to shows or dramatic presentations of the type and character outlined in the above factual statement, but we are of the opinion that, by reason of the exemption features hereinafter discussed, neither Council No. 18 of the League of United Latin American Citizens nor the traveling show employed by such league, would be subject to the occupation tax levies made thereby.

Considering first the liability of the traveling show in question to the occupation tax levy embodied in Article 7047, Section 22a, Vernon's Annotated Civil Statutes and Article 7047a, Section 19, Vernon's Annotated Civil Statutes, we point out that each of such tax levies falls upon the owner, proprietor, or operator of an "opera house, theater, tent, airdome or other structure where theatrical or dramatic presentations, musical comedy shows, moving pictures or other entertainments or exhibitions are given" or upon and against the owner or operator of "any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera house, etc.". In other words, the tax is levied against the owner, operator or proprietor of an established or fixed place of amusement such as a theater building or opera house, rather than upon the show, performance or exhibition, whether one or many. It appearing from the facts submitted that the traveling show in question possessed and used no tent or other structure in which to give their performances as they travel from place to place, but gave their performances in regularly licensed theaters or opera houses in the various localities, and it further appearing that Lulac Hall, in which these particular performances were given, was not rented to this traveling show, so as

Honorable S. B. Buchanan, Jr., May 6, 1939, Page 3

to give them any rights of control or possession thereof, we think it follows that such traveling show was not within the intendment of these tax measures so as to be liable for the tax thereby imposed.

With reference to the liability of Council No. 18, League of United Latin American Citizens to the taxes levied by these pertinent occupation tax statutes, it appears from your communication that Lulac Hall, where the performances of this traveling show were given, was owned by said Council No. 18, League of United Latin American Citizens, so as, conversely to the above proposition, to visit liability upon such organization for the occupation taxes in question, unless such organization is plainly removed from the scope and purview of such tax measures by other provisions thereof.

In this connection we find such expressed exemption from the incidence of the occupation tax levied by Article 7047, Section 22a, Vernon's Annotated Civil Statutes, in the following language:

"Said annual tax shall be collected from the owner, proprietor of every opera house, theatre, tent, airdome or other structure where theatrical or dramatic presentations, musical comedy shows, moving pictures or other amusements, entertainments or exhibitions are given for private profit in such cities, towns or villages of the sizes aforesaid; . . . . ."

Adverting now to the other pertinent tax measure, to-wit, Article 7047a-19, Vernon's Annotated Civil Statutes, we find that exemption is likewise afforded from the tax thereby levied under the following language:

". . . . provided, however, no tax shall be levied under this Act on any admission collected for dances, moving pictures, operas, plays, and musical entertainments, all the proceeds of which inure exclusively to the benefit of State, religious, educational, or charitable institutions, societies, or organizations, -- if no part of the net earnings thereof inure to the benefit of any private stockholder or individual; . . . . ."

Honorable B. B. Buchanan, Jr., May 6, 1939, Page 4

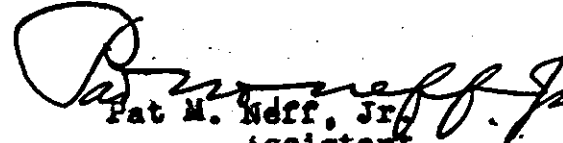
Under the facts of the instant inquiry all net profits or proceeds from the activities of Council No. 18, League of United Latin American Citizens, in sponsoring these traveling shows in Tulac Hall are used solely to create and maintain a Student Loan Fund. That such laudable purpose and activity brings the organization in question within the limit of the foregoing exemption, running to educational or charitable institutions or societies, or other non-profit organizations, cannot be gainsaid.

Regarding the tax levied by Article 7047a, Section 19, Vernon's Annotated Civil Statutes, an additional and independent exemption is afforded this organization, in that the admission charged is, according to your letter, less than fifty-one cents per person.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

  
Pat M. Neff, Jr.  
Assistant

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APPROVED

  
Gerald B. Mann  
ATTORNEY GENERAL OF TEXAS